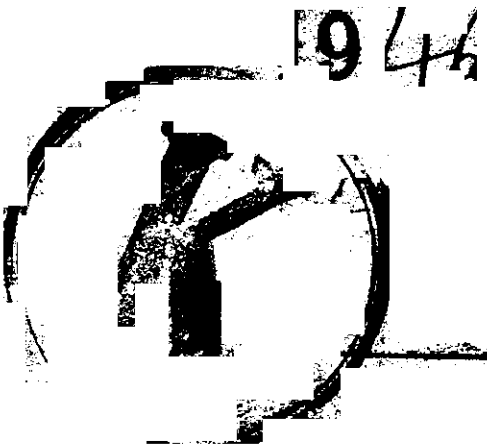




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File No C Dist. Pol / 46

Legal Department

A BRANCH

Subject:—

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Opinions Under the
Borneo District Police Act, 1890

File No.

Gen. 194 e.

O 1st Pol / 46

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CONTENTS

Legal Department File C.Dist. Police 1946

Serial No. R.I./O.No.	Subject	Page.
1) O.No. 1431/20-2-46	B'bay Dist. Police Act, 1890-Sec. 46(1)-- Whether the orders passed by the Sub-Divnl. Magistrate can be revised by the Dist. Magistrate.	1-3
2) O.No. 4249/10-1-46	Sec 45(1)-- Whether in the event of an outbreak of any epidemic disease a cinema house can be ordered to be closed down.	5-6
3) O.No. 5696/16-8-46 O.No. ~~5696/16-8-46~~	Sec 42(1)-- Empowering the Asstt. Collr. to exercise the powers under the--	7-11

SMR 10-7-56
5 Copies.

RHH
2617

NKB
2617

Office of the R.L.A.

The first question for the consideration of the R.L.A. is whether the Collector of Ahmedabad and Commissioner Northern Division can be authorised to write off the arrears of Rs. 8,625 of the riot tax in Ahmedabad as irrecoverable.

Sub-section (2) of section 25 of the Bombay District Police Act, 1890 provides that every tax imposed or rate assessed or the amount recoverable by the Collector under any provision of this Act shall be recoverable by the Collector as if it were an arrear of land revenue due by the person answerable therefore. It is therefore clear that the provisions of the Bombay Land Revenue Code, 1879 in so far as they relate to the recovery of land revenue shall apply to the recovery of the tax imposed or rate assessed by the Collector under clause (b) of sub-section (1) of section 25-A of the Bombay District Police Act. Government orders authorising the Collector and Commissioners to write off irrecoverable arrears of land revenue can have no application to writing off irrecoverable arrears of the tax imposed or rate assessed by the Collector under sub-section (1)(b) of Section 25-A of the Bombay District Police Act. Consequently no valid orders can be passed in the present case by Government authorising the Collector, Ahmedabad and Commissioner, Northern Division to write off irrecoverable amount of Rs. 8,625-4-0

The second question for consideration is whether it is legally competent for Government to appropriate the excess amount of Rs. 19,983 recovered by the Collector under section 25-A(1) of the Bombay District Police Act.

= There is no provision in the Bombay ^{District} Police Act as to how the excess amount should be disposed of. The Advocate General was consulted on the question ^{whether} Government would be entitled to the funds in possession of the High Court which it claimed to hold as a stake-holder and he opined.

"Whatever be the character of the moneys so held they are moneys paid to the Crown and Government would be entitled

to the custody of these moneys the High Court as such having no right to retain the custody of the funds which have come into its possession" (see A.G.'s opinion dated 15-4-1939). Applying that principle to the present case it appears that Government would be entitled to the custody of the excess amount, but whether or not it can appropriate the amount is not free from doubt and it appears that legislation would be desirable for the purpose.

Id./P.N.M. 22/1/46

Remembrancer of Legal Affairs

U.R. to H.D., No. 612, dated the 23rd X January 1946.

SMR 10-7-56
4 Copies.

Office of the R.L.A.

The question referred to the Remembrancer of Legal Affairs is whether the order passed by the Sub-Divisional Magistrate, Bhusaval Division under section 46(1) of the Bombay District Police Act, 1890 can be revised by the District Magistrate.

The Sub-Divisional Magistrate in passing an order of externment under section 46(1) of the Bombay District Police Act, 1890 acts in an administrative capacity and not in a judicial capacity. Consequently section 435 Criminal Procedure Code cannot be invoked by the District Magistrate for the purpose of satisfying himself as to the correctness of the order. In the absence of any provision either for appeal or for revision the order of Sub-Divisional Magistrate cannot be interfered with. Since however the order of the Sub-Divisional Magistrate is in the nature of an executive Order there appears no objection to the Sub-Divisional Magistrate himself modifying or cancelling his order or Government issuing instructions to him so to do. If the Sub-Divisional Magistrate fails to modify or cancel the order either on his motion or on the instruction of Government the only course open to the aggrieved party is to disobey the order and have it tested in a Court of law. Though an order under section 46 is an executive order and is not subject to appeal or revision in a court of law, yet when an attempt is made to impose a penalty for breach of the order, the validity of the order can be tested in a court of law. (Emperor v. Yarmahomed Ahmedkhan 40 Bom. L.R.483).

Id./... 19/2/46

Remembrancer of Legal Affairs.

U.B. to H.D.No. 1431 dated the 20th February 1946.

SMR 10-7-56, 4 Copies.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether in the event of an outbreak of any epidemic disease a cinema house can be ordered to be closed down either under section 45(1) of the Bombay District Police Act, 1890 or under Rule 17 of the Rules for licensing and Controlling Theatres and other places of public Amusement framed under section 39A of the Act.

Section 45(1) of the Bombay District Police Act, 1890, provides as follows:-

"Whenever it shall appear to the Magistrate of a district that any place in the district, at which, on account of a fair, pilgrimage or other such occurrence, large bodies of persons have assembled, or are likely to assemble, is visited or will probably be visited with an outbreak of any epidemic disease, he may take such special measures and may by public notice prescribe such regulations to be observed by the residents of the said place and by persons present theatre or repairing thereto or returning therefrom as he shall deem necessary to prevent the outbreak of such disease or the spread thereof".

This section contemplates the taking of special measures at a place at which on account of a fair, pilgrimage or such other occurrence, large bodies of persons have assembled or are likely to assemble. It seems, therefore, very doubtful if under the section the District Magistrate would be justified in ordering the closure of cinema houses where people no doubt assemble but not in such large numbers as one generally associates with fairs, pilgrimages and such other occurrences.

Rule 17 of the Rules for Licensing and Controlling Theatres and other places of public Amusement framed under section 39A of the Bombay District Police Act, 1890, provides:-

"It shall be in the discretion of the Licensing Officer at any time or suspend any license for premises granted under these rules and to direct the person keeping any such premises to close such premises either permanently or temporarily, or otherwise to act with reference thereto, in order to prevent any obstruction, inconvenience, annoyance risk, danger or damage to the residence or passers-by in the vicinity or for the maintenance of public safety and the prevention of disturbance in such premises, and every holder of a license for premises under these rules shall forthwith comply with any such direction given".

It is clear from the provisions of this rule that when there is an outbreak of any epidemic disease, the licensing Authority would be ~~just~~ justified in ordering the closure of cinema houses for the ~~same~~ purpose of preventing the spread of the disease and the risk and danger to the residents of the locality and also for the maintenance of public safety.

Id./..... 7/6/46

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.)No. 4249, dated the 10th June 1946.

SMR 10-7-56

4 copies.

R.I.No. 5890 dated 2/3-7-1946

Submitted.

2 The D.M.Thana recommends that in view of the present uncertain political situation, Mr. A.H.Khan, I.C.S. Assistant Collector, Dahann Prant, who is a Second Class Magistrate, may be empowered to exercise powers under section 42 of the Bombay District Police Act, 1890. The Commr. N.D. strongly recommends the D.M.'s proposal. H.D. in its note at p. ante states that the question whether ~~Government~~ Government or the D.M. of the District is vested with the powers under section 42(1A) of the Act to specially empower a second class magistrates to exercise powers under section 42 is not free from doubt. The R.L.A. is therefore requested to advise in the matter.

3 Sub-section (1) of section 42 of the Bombay District Police Act, 1890 provides that the magistrate of the district may, whenever and for such time as it shall appear necessary, by a notification publicly promulgated or addressed to individuals, prohibit in any town or village or the vicinity thereof the carrying of arms, cudgels or other weapons etc, etc. Sub-section (1A) provides that in the absence of the Magistrate of the district a Magistrate of the First Class or a Magistrate of the Second class specially empowered in this behalf having jurisdiction in any town or village and present therein or in the neighbourhood thereof may similarly issue a prohibitory order of the nature referred to in sub-section(1) which shall have operation in such town or village and the vicinity thereof. Section 42(1) was amended by Bom- Act 9 of 1931. Subsection (1) of section 42, as it stood before it was amended by Bom. Act 9 of 1931 was interpreted by the Bombay High Court in Emp. V.Dattatraya Laxman Somnathdar, 16 Bom. L.R.153, to mean that it was necessary for the magistrate of the District or a

magistrate of the first class, issuing an order under that section, to be present in the town or village, to which the order applies or in the neighbourhood thereof at the time he issues the order. The words in sub-section(1) "or in his absence and subject to his order the Magistrate of the First Class having jurisdiction in any town or village and present therein or in the neighbourhood thereof" were therefore omitted by Bom. Act 9 of 1931. This amendment was intended to dispense with the condition of being present in the case of the District Magistrate, when he issues the order although the condition was left in tact in the case of the Magistrate of the First Class. (Please see S.O.Rs. to the Bill 16 of 1931, B.L.C. Debates Vol. 31 p. 1039). Opportunity was also then taken to extend the provisions of the section to specially empowered second class magistrates by the addition of sub-section (1A) to this section. In moving the first reading of the bill the Hon'ble Mr. G.A. Thomas observed thus:-

"This opportunity is taken to extend the provisions of the section to specially empowered second class magistrates, for the reason that if there are an insufficient number of first class magistrates in a district and if a state of affairs should arise necessitating the issue of orders under this section on a wide scale, there might be serious delay, resulting in loss of life and damage to property unless the power to issue the orders were conferred upon a greater number of magistrates than the section provides for. It is not, however, the intention of Government to make an indiscriminate ~~xxxx~~ use of the proposed extension or powers. In fact, I hope that it will never be found necessary to empower a single second class magistrate to ~~xxxx~~ take action under the section. The object of the amendment is solely and simply to make it possible for Government to take wider steps than they now possess to quell disorders in the case of a grave emergency arising. I hope that this assurance will enable this honourable House to pass the proposed amendment with easy minds"

In the general remarks made by Rao Bahadur R.R. Kale opposing the empowerment of the second class magistrate to exercise this power he observed; In this Bill the discretion is sought to be vested in the second class magistrates specially empowered in this behalf by Government. I think that at the present time the second class magistrates should not be empowered with this power etc.etc." (Ibid p. 80) With regard to these remarks the Hon'ble

Mr. Thomas gave an assurance during the second reading of the bill that the empowerment of the second class magistrates will be done only in cases of emergency and Government will use that power only in exceptional circumstances (please see Bom. Legis. Council Debates Vol. XXXI-July-August 1931 pp. 81 and 83). Consequently, it appears, that the empowerment of the second class magistrates under section 42(1) of the Act can only be done by the Provincial Government and not by the District Magistrates.

Sd./..... 23/7
P.A.

1

I agree.

From the Council debates underlying Bill No. 16 of 1931, it is evident that the object of insertion of sub-section (1A) to section 42 of the Bombay District Police Act-1890, was to take power to Govt. to empower second Class Magistrates to issue prohibitory orders of the nature referred to in sub-section (1). The D.M., therefore has no authority to confer any fresh power on a Second Class magistrates, and any such order already issued will be illegal.

Id./... 7/8
A.A.L.R. I agree. Reply may be

The words "specially empowered in this behalf" in section 42(1A) of the Bombay District Police Act, 1890 mean specially empowered in this behalf by Govt. (see Bom. Legis. Council Debates Vol. XXXI-July-August 1931 pp. 81, 83).

Id./... 2/8

R.L.A. Id./.... 13/8/46
U.R. to H.D.No. 5696, dt. the 16th Aug, 1946.

SMR 10-7-56, 4 Copies.

Office of the R.L.A.

The words "specially empowered in this behalf" in section 42(1A) of the Bombay District Police Act, 1890 mean specially empowered in this behalf by Government (see Bom. Legis. Council Debates Vol. XXXI July-August 1931, pp. 81,83).

Id./... 14/8/46

Remembrancer of Legal Affairs.

V.R. to H.D.No. 5696, dated the 16th August 1946.

SMR 10-7-56
4 Copies.